

REMARKS

Applicants respectfully request reconsideration of the present application in light of the preceding amendments and following remarks.

Claims 1-22, 25, 27-34, 36, 40, 41 and 43-46 are pending. Claims 1, 9, 29 and 40 are in independent form. Claims 1, 7, 9, 11-13, 16, 25, 27, 29, 31 and 40 are amended.

Applicants incorporate the Request for Reconsideration dated June 22, 2010, in its entirety by reference.

Rejections under 35 U.S.C. § 101

Claims 1-8, 40-41, and 43-46 stand rejected under 35 U.S.C. § 101 as allegedly being drawn as a whole to an abstract idea. Applicants respectfully traverse these rejections.

On page 2 of the Office Action the Examiner alleges that:

Claims 1-8, 40-41, and 43-46 are not statutory as they are drawn as a whole to an abstract idea. A review of the factors outlined in the July 27, 2010 policy memo and OG notice, indicates that these claims are not statutory. These claims fail the machine or transformation test as the steps of a, b and c could be performed in one's mind or manually and involve only the general concept covering both known and unknown uses of the concept covered, and can be performed through any existing or future-devised machinery or even without any apparatus.

Applicants respectfully disagree.

Initially, Applicants note that, for example, claim 1 recites, "signing each access operation to electronic data ... each access operation is recorded in an audit memory ... the user signature is recorded in a user signature memory and in the audit memory, and the at least one role signature is recorded in a role signature memory and in the audit memory." Therefore, although the Examiner alleges that the, "the

steps of a, b and c could be performed in one's mind or manually[.]" the Examiner provides no reasoning as to how signing access operations to electronic data and recording data in a memory could be performed only in one's mind or manually. Applicants respectfully submit that claims 1-8, 40-41, and 43-46 recite sufficient structure to include statutory subject matter under both prongs of the machine or transformation test.

However, Applicants do not address the guidelines with specificity at least because the law has changed since the guidelines were issued. In recent cases the Court of Appeals for the Federal Circuit ("CAFC") has determined patent eligible subject matter based on abstractness without reference to the machine or transformation test where there is no tying to other statutory categories. For example, in *Research Corp. Technologies, Inc. v. Microsoft Corp.*, No. 2010-1037 (Fed. Cir. Dec. 2010), the court held that method claims without any recited structure are patentable where they claim, "functional and palpable applications in the field of computer technology." *Id.* Emphasis added. The CAFC did not rely on the claims themselves but looked to the patent (e.g., the specification) in determining that the claims were applications in the field of computer technology. A representative claim held to be patentable in *Research corp.* is as follows:

1. A method for the halftoning of gray scale images by utilizing a pixel-by-pixel comparison of the image against a blue noise mask in which the blue noise mask is comprised of a random non-deterministic, non-white noise single valued function which is designed to produce visually pleasing dot profiles when thresholded at any level of said gray scale images.

In finding a method of halftoning patentable, the court first held that the method claims were a process under the statute, and then inquired whether Appellants claimed a law of nature, a physical phenomenon or an abstract idea. The

court noted that some claims in Appellants' patents require physical components and stated that "[i]nventions with specific applications or improvements to technologies in the marketplace are not likely to be so abstract that they override the statutory language and framework of the Patent Act[.]"

In general, the CAFC has made clear that "[t]he section 101 patent-eligibility inquiry is only a threshold test .. section 101 eligibility should not become a substitute for a patentability analysis related to prior art, adequate disclosure, or the other conditions and requirements of Title 35." *Research Corp.* The level of abstraction necessary to render claims unpatentable, "should exhibit itself so manifestly as to override the broad statutory categories of eligible subject matter and the statutory context that directs primary attention on the patentability criteria of the rest of the Patent Act." *Id.*

The present claims are less abstract than the claims in *Research Corp.* at least because they recite physical components, and are directed to specific applications or improvements to technologies in the marketplace. Further, the application as a whole establishes that the present claims are functional and palpable applications in the field of computer technology.

Accordingly, Applicants respectfully submit that original claims 1-8, 40-41 and 43-46 are not abstract and include statutory subject matter.

Claim Rejections under 35 U.S.C. § 112, 1st Paragraph

Claims 1, 9 and 29 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

The Examiner states that, “[s]aid claims recite the limitation, “performing a security check upon each access operation.” Applicant’s specification does not show this and further cites that only one security check is performed.” Office Action, p. 4.

Applicants respectfully disagree.

Applicants note that, as one example, original claim 1 directly supports a security check for each access operation. Original claim 1 recites “a method” including “a security check ... permitting an access operation[.]” Emphasis added. One access operation is permitted for one security check. Although the use of “comprising” allows for the permission of additional access operations, the literal language of original claim 1 explicitly supports the performance of a security check upon each access operation. Original claims constitute part of the originally filed disclosure for purposes 35 U.S.C. § 112.

With respect to the Examiner’s allegation that Applicants’ specification, “further cites that only one security check is performed[.]” for multiple access operations, paragraph [0010] of Applicants specification as-published states that, “[a]nother advantage is that **the method** requires just one security check from the user, but otherwise takes place fundamentally unnoticed by the users, and is therefore particularly **easy and noncomplex to handle**.” Emphasis added. The statement cited to the Examiner is not directed to access operations but to steps within an iteration of method, and specifically to the absence of additional security checks during signature assignments. For example, the statement cited by the Examiner is further explained in paragraph [0046], which states that, “the user is no longer confronted by the assignment of the signatures, and finds the work of the signature tool to be **uncomplicated and easy to handle**.” Emphasis added. This is further supported by, for example, paragraph [0023] of Applicants’ specification which states

that, “[t]he degree of proof against deception for ascertaining the user signature is essentially dependent on the proof against deception of the **previous security check**[.]” Emphasis added.

Although the specification does not limit example embodiments to the performance of a security check for each access operation, Applicants respectfully submit that the literal language of the specification with respect to at least one example embodiment directly supports the requirement of a security check for each access operation. Withdrawal of these rejections is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 1-22, 25, 27-34, 36, 40-41, and 43-46 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Khidekel (US 2001/0027527, hereinafter “Khidekel”) in view of Ballantyne (US 5,867,821, hereinafter “Ballantyne”). Applicants respectfully traverse these rejections.

Neither Khidekel nor Ballantyne, alone or in combination, disclose, at least, “storing, in an audit memory, accessed data information and access operation information together with the user signature and the at least one role signature specified for each access operation[.]” as recited by claim 1.

The Examiner acknowledges that Khidekel, “is mute in teaching ... recording each access operation and the user signature and the at least one role signature specified for each access operation[.]” Office Action, p. 5, emphasis in the original. The Examiner alleges that Ballantyne repairs the deficiency of Khidekel because Ballantyne discloses, “wherein all user accesses are documented[.]” citing to Ballantyne, col. 8, lines 54-64. *Id.*

Ballantyne discloses that, “[a]ll authorized users that access any patient record, their name and time of access are all documented (344).” Ballantyne, col. 8, lines 54-56. Ballantyne does not disclose, at least, recording at least one role signature together with other information for each access operation as required by claim 1.

The Examiner considers the “personal electronic profile as containing information analogous to the claimed role signature.” Office Aaction, p. 5. Even assuming, *arguendo*, that the role signature of claim 1 could be equated to the personal electronic profile of Ballantyne, Ballantyne discloses that the personal electronic profile is used to query a user with a specific question related to information stored in the user profile to gain access to a medical information network (user validation). Ballantyne, col. 8, lines 7-43. Ballantyne does not disclose that the personal electronic profile is stored in an audit memory for each access operation as required by claim 1. Ballantyne only discloses that a user's name and time of access is recorded. Accordingly, the combination of Khidekel and Ballantyne cannot render claim 1 obvious. Applicants note that a complete reconstruction of an access operation according to the combination proposed by the Examiner cannot be performed. For example, a snapshot of the personal profile at the time of the access operation is unavailable and, should roles change, that personal profile at the time of an access operation is unavailable.

Neither Khidekel nor Ballantyne, alone or in combination, disclose every element of claim 1. Therefore, even assuming, *arguendo*, that Ballantyne could be combined with Khidekel (which Applicants do not admit), Khidekel in view of Ballantyne cannot render claim 1 obvious. Claims 9, 29 and 40 are patentable for reasons at least somewhat similar to those stated above for claim 1, noting that claims 9, 29 and 40 should be interpreted based solely on the limitations contained therein.

Claims 2-8, 10-22, 25, 27, 28, 30-34, 36, 41 and 43-46 are patentable at least by virtue of their dependency from one of claims 1, 9, 29 and 40. Withdrawal of the rejections and allowance of claims 1-22, 25, 27-34, 36, 40-41, and 43-46 is respectfully requested.

Claim 7

Claim 7 recites, *inter alia*, "wherein the at least one role signature is a plurality of role signatures."

Applicants respectfully submit that neither Khidekel nor Ballantyne, alone or in combination, teach or fairly suggest recording each access operation by, *inter alia*, storing a plurality of role signatures in a memory as required by claim 7. Khidekel does not disclose that each role signature identifies a different activity group with a particular responsibility, as required by claim 7. Withdrawal of the rejection and allowance of claim 7 is respectfully requested.

CONCLUSION

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By



Donald J. Daley, Reg. No. 34,313
P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

DJD/AXV:jrm